

CHAPTER I

INTRO DACTION

A. Background

The term of unregistered marriage, often called sirri marriage, is well known in Indonesian culture. In etymology, the term is not listed in the books of hadith. The *Ulama* never mentions the term in any books. In jahiliyah era, there was a marriage that was similar with sirri marriage, which was called *Khaddan* marriage. *Khaddun* is marriage in hiding conducted by stealth male or female. This wedding was allowed by the arabs *jahiliyah* at that time¹. Thus, sirri marriage once existed at the time of the Prophet Muhammad S.A.W. However, the term of marriage can not be found in Islamic classical studies.

The early emergence of the sirri marriage is found more among artists and state officials in Indonesian. Proven, sirri marriage has been talked on the television news in this country. Either it is true or just an issue. As the case of singer Mayangsari that had a lot of talks in the media about her marriage with the son of former second President of Indonesia, Bambang Trihatmojo who had married with Halimah Agustina Kamil. Then, the marriage was estimated not be executed at the

¹ Hasan. *Bentuk perkawinan sebelum Islam*. <http://el-ghozali-hasan.blogspot.co.id/2011/04/bentuk-perkawinan-sebelum-islam.html>. Accessed on the date 10 March 2015.

KUA or in Civil Registry, but only be executed by Mayang Sari's relatives². Recently, in 2012, the same case was aimed by the Magician Limbat. A famous magician who made his debut while following talent search competition on one of Indonesia television stations. He once conducted *sirri marriage* with a woman named Bernazir³. And there are many similar cases describing craze of artists or official state.

By looking at the facts and realities that have happened in the field. In this condition, appear several opinions that has many conclusions. Among differences of opinion on negative and positive impact. Most societies prohibit hard action to sirri marriage It has been assumed as harass women. Even, the community has no doubt to excommunicate and reject all forms of kindness or ugliness of such action. And some other thoughts that sirri marriage is not a deed negative. Because marriage in the Sahabat Rasulullah era was not written like in this modern era. And they defend sirri marriage with enhanced by solid argument.

From this various points of view which will be analyzed without lame later. It is important to provide the scientific answer. And the statement over the feasibility of the Act regulates about sanctions criminal to sirri marriage. This design was

² Gusmawa, Egi. *Nikahi Mayangsari, Bambang Tri Cuma Didukung Kakaknya*. <http://celebrity.okezone.com/read/2011/07/12/33/479011/nikahi-mayangsari-bambang-tri-cuma-didukung-kakaknya>. Accessed on the date 15 March 2015.

³ Sari, Henny Rahma. *Cerita Pesulap Limbat Melakoni Nikah Sirri*. <http://www.merdeka.com/peristiwa/cerita-pesulap-limbat-melakoni-nikah-siri.html>. Accessed on the date 15 March 2015.

publicized around 2010. The draft makes some statements related to criminal sirri marriage. In this draft, the government has dropped the heavy sanctions, namely a maximum of six months prison confinement for the parties who get married in Sirri⁴. This sanction raises many questions, especially among legal experts. Whether worthy of confinement 6 months of imprisonment or fining Rp 6.000.000 applied. Of course, this is not something that is easy to think. Because this requires a deep study. And it is whether worthy or not for sirri marriage to get punished.

In a positive law, all customary of wedding can legalize if it is listed in the KUA or Civil Registry. So, if any marriage is not registered, hence it does not have legal protection on it. But if the wedding is recorded, hence the culprit has a right to be protected. Furthermore, some communities view that this marriage is very harmful to all parties, especially the wife and child.

The impact of sirri marriage has been often seen by us in the surrounding. And if it is tracked further, the impact of sirri marriage is much more borne by the wife and child. It is like a divorce can be conducted anytime, over the right of the wife of a living, *gono-gini* asset that is not apparent, and the legal status of children who are not clear. If a law draft on criminal sanctions for sirri marriage set by the Government, the sanctions confinement will apply to sirri marriage later.

⁴ Hukum online. *Ancaman idana Bagi Pelaku Nikah Sirri*.
<http://www.hukumonline.com/berita/baca/lt4b7415136a2ee/ancaman-pidana-bagi-pelaku-nikah-siri>.
Diakses tanggal 15 Maret 2015.

However, this marriage is not only raises the impact of negative course. If we review again, those who have been conducting sirri marriage having a certain reason for conducting the marriage. For example, it is because of the needs of an economy that is not adequate, or the difficulty of keeping lust, and others. This requires assessment to address this issue. And helps the community in understanding the nature of marriage.

This research discusses how the form of legal protection given to the sirri marriage or what proper sanctions given to them, Is the 6 months confinement sanction designed by government right? Furthermore, the case that exists in the community is very important for the process of this research. Because of this case, we can give a description or explanation Related legal protection of unregistered marriage.

The enactment of law is not merely peremptory and runs course, but the substance of law should be understood. By understanding the law, we will understand the way to step in community. Thus, substance of law is crucial and must be understood by all human beings.

Therefore, this research will give the understanding to us, whether sirri marriage is needed to get law protection or not. And whether the draft bill could solve the problem in society or not. Hopefully, the resesearcher can give the closer answers to the truth, although the truth is just belonging to God.

B. Statements of Problem

Based on background of the study above, the resesearcher formulates the problems described in this study as follows:

1. Unregistered marriage in the perspective of civil law?
2. Unregistered marriage in the perspective Islamic law ?
3. The legal protection of unregistered Marriage ?

C. Purposes of Study

Here are the purposes of the study as follow:

1. To know how unregistered marriage in the perspective of civil law.
2. To know how unregistered marriage in the perspective of Islamic law.
3. To know how legal protection of unregistered marriage.

D. Benefits of Study

The benefits of this research include:

1. The results of this study can be used to add insight related to the legal protection of unregistered marriage. Which mostly we find that marriage is often harmful to either party.
2. The information obtained can be used as a reference for subsequent studies with more useful and accurate results.

E. Research Methodology

The research method is a strategy or a scientific way that is performed to obtain data for specific purposes. The one used in the research is as follows:

1. Type of Research

This study uses literature research (library research), which precedes the sources such as books, papers, articles, newspapers, and other library materials. This method will give the possibility to be resolve some problems by collecting the scientific data.

The reason of the reseacher in selecting this type of research because this method considered appropriate to approach the problem to be studied.

2. Nature of Research

This reseearch uses descriptive analytical, by collects data then is compiled, analyzed and concluded. So as to provide a clear draw and systematic.

3. Research Approach

The approach used in this study is a qualitative approach. Means that in collecting data tends to use library research methods, the data comes from the sources of literature. The reseacher refers the books that are related to the subject matter discussed, that is by the way to read, understanding and concluding directly related to the research conducted.

As the resesearcher explained, this study requires data to give a satisfactory result. Therefore, the researcher refers to books, such as the book by Prof. Dr. Abdul Ghofur Anshori, SH, M.H. entitled " *Hukum Perkawinan Islam Perspektif Fikih Dan Hukum Positif* ", and the book by Prof. Dr. Yusuf Ad-Duraiwisy entitled " *Nikah Sirri, Mut'ah, Dan Kontrak Dalam timbangan al-Quran dan as-Sunnah* ", and than the book by Dr. H. Zainal Asikin, S.H., S.U. entitled " *Pengantar Ilmu Hukum* ", and the book by Dr. H. M. Nurul Irfan, M.Ag. entitled " *Nasab Dan Status Anak Dalam Hukum Islam* ", that will be used to obtain secondary data on legal protection of unregistered marriage.

4. Data Analysis Technique.

Once all the data has been collected, the resesearcher begins to analyze the data, by providing interpretation of data obtained using qualitative methods. The approach uses more emphasized on data aspects in an objective assessment of an issue or phenomena that exist.

The steps are as follows:

- a) Collecting data obtained from the scientific paper and related literature.
- b) Classifying the data and sorting by categories
- c) Once the data is compiled, the data is classified and then the next step is the inference or conclusion bases on existing data.